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6 **IN THE UNITED STATES BANKRUPTCY COURT FOR THE**
7 **WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

8 In re:)
9) NO. 09-16002-KAO
10 ROBERT J. MCINTOSH and)
YOSHIE K. MCINTOSH,) ADVERSARY NO. 09-01418-KAO
Debtors.)
11 _____)
12 ROBERT J. MCINTOSH and) **U.S. BANK, N.A.'S ANSWER TO THE**
YOSHIE K. MCINTOSH,) **COMPLAINT TO STRIP OFF JUNIOR LIEN**
13) **OF U.S. BANCORP aka U.S. BANK, N.A.**
Plaintiffs,)
14 v.)
15 U.S. BANCORP aka U.S. BANK, N.A.,)
16 Defendant.)
17 _____)

18 U. S. Bancorp, aka U.S. Bank, N.A. (hereinafter "U.S. Bank") answers the complaint as follows:

19 **JURISDICTION AND VENUE**

20 1.1 Answering paragraph 1.1 of Plaintiffs' complaint, U.S. Bank admits the allegations
21 contained therein.

22 1.2 Answering paragraph 1.2 of Plaintiffs' complaint, U.S. Bank admits that the Bankruptcy
23 Court has jurisdiction over these proceedings.

24 1.3 Answering paragraph 1.3 of Plaintiffs' complaint, U.S. Bank admits the allegations
25 contained therein.

26 1.4 Answering paragraph 1.4 of Plaintiffs' complaint, U.S. Bank admits the allegations
contained therein.

U.S. BANK, N.A.'S ANSWER TO THE COMPLAINT... - 1

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1 **PARTIES**

2 2.1 Answering paragraph 2.1 of Plaintiffs' complaint, U.S. Bank admits the allegations
3 contained therein.

4 2.2 Answering paragraph 2.2 of Plaintiffs' complaint, U.S. Bank admits the allegations
5 contained therein.

6 **APPLICABLE LAW**

7 3.1 Answering paragraph 3.1 of Plaintiffs' complaint, U.S. Bank admits the allegations
8 contained therein.

9 **FACTS**

10 4.1 Answering paragraph 4.1 of Plaintiffs' complaint, U.S. Bank admits the allegations
11 contained therein.

12 4.2 Answering paragraph 4.2 of Plaintiffs' complaint, U.S. Bank is without sufficient
13 information to form a belief as to the truth of the majority of the matters asserted and therefore denies the
14 allegations contained in paragraph 4.2 of the complaint.

15 4.3 Answering paragraph 4.3 of Plaintiffs' complaint, U.S. Bank is without sufficient
16 information to form a belief as to the truth of the majority of the matters asserted and therefore denies the
17 allegations contained in paragraph 4.3 of the complaint.

18 4.4 Answering paragraph 4.4 of Plaintiffs' complaint, U.S. Bank admits that the Debtors'
19 amended bankruptcy Schedules filed on June 16, 2009, list the fair market value of the Residence to be
20 \$240,000.

21 **COUNT 1: VALIDITY OF DEFENDANTS' LIENS UNDER THE BANKRUPTCY CODE**

22 5.1 Answering paragraph 5.1 of Plaintiffs' complaint, U.S. Bank reasserts its answers in
23 paragraphs 1.1 through 4.4 by reference.

24 5.2 Answering paragraph 5.2 of Plaintiffs' complaint, U.S. Bank denies the allegations
25 contained therein. U.S. Bank submits the property has a value of at least \$285,000 as indicated by a true
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1 and correct copy of a Broker's Price Opinion obtained by U.S. Bank and attached hereto as **Exhibit A** and
2 incorporated herein by this reference.

3 5.3 Answering paragraph 5.3 of Plaintiffs' complaint, U.S. Bank denies the allegations
4 contained therein.

5 5.4 Answering paragraph 5.4 of Plaintiffs' complaint, U.S. Bank denies the allegations
6 contained therein.

7 5.5 Answering paragraph 5.5 of Plaintiffs' complaint, U.S. Bank denies the allegations
8 contained therein.

9 5.6 Answering paragraph 5.6 of Plaintiffs' complaint, U.S. Bank denies the allegations
10 contained therein.

11 12 **AFFIRMATIVE DEFENSES**

13 By way of further answer and response to the Plaintiffs' Amended Complaint, U.S. Bank sets forth
14 the following Affirmative Defenses.

- 15 1. Plaintiff has failed to state a claim against U.S. Bank upon which relief can be granted.
- 16 2. Plaintiffs' claims are barred by application of the doctrines of waiver, laches and/or estoppel.
- 17 3. Some or all of Plaintiffs' alleged damages are not available under causes of action pled in
18 Plaintiffs' complaint.
- 19 4. Granting Plaintiff's demand in the Complaint would result in unjust enrichment.
- 20 5. Some or all of the Plaintiffs' state law allegations and claims are preempted by directly
21 applicable federal bodies of law.
- 22 6. U.S. Bank expressly reserves the right to add additional affirmative defenses as they
23 determine to be appropriate at any time in the future.

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26 U.S. BANK, N.A.'S ANSWER TO THE COMPLAINT... - 3

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1 Wherefore, U.S. Bank, N.A. prays for the following relief:

- 2 1. Entry of a judgment denying all of the relief requested by the Plaintiffs;
- 3 2. Award to U.S. Bank, N.A. of its costs and fees incurred herein; and
- 4 3. For such other relief as the Court deems just and equitable.

5 Dated this 9 day of November 2009.

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8 By: /s/ Daniel L. Hembree
9 Daniel L. Hembree WSBA #37109
10 of Bishop White & Marshall
11 Attorneys for U.S. Bank, N.A.

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